



**International Covenant on Civil and
Political Rights**

Distr.: General
31 March 2008

Original: English

**Human Rights Committee
Ninety-second session**

Summary record of the 2512th meeting

Held at Headquarters, New York, on Monday, 17 March 2008, at 3 p.m.

Chairperson: Mr. Rivas Posada

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant

Fifth periodic report of Tunisia (CCPR/C/TUN and CCPR/C/TUN/Q/5)

1. At the invitation of the Chairperson, the members of the delegation of Tunisia took places at the Committee table.

2. **Mr. Amor**, recused himself under rule 71, paragraph 4, of the rules of procedure of the Human Rights Committee.

3. **Mr. Tekkari** (Tunisia) said that his Government's report spanned a ten-year period and summed up the human rights situation in Tunisia at a time of rapid reforms intended to advance the country's modernization agenda. The reforms introduced covered issues such as the rule of law; the consolidation of rights and freedoms and of the system of justice; the promotion of a human rights culture; and commitment to cooperation with United Nations and regional human rights mechanisms. While considerable progress had been made with respect to the promotion and protection of human rights, much work remained to be done. The recent measures taken by his Government to give fresh impetus to its efforts in that area included the decisions to welcome Special Rapporteurs from both the Human Rights Council and the African Commission on Human and Peoples' Rights and to present eight periodic reports in 2008, concerning the implementation of various human rights conventions to the relevant United Nations bodies; the strengthening of the Tunisian High Committee on Human Rights and Fundamental Freedoms by conferring legislative status on it and giving it broad powers to combat human rights abuses; the withdrawal of Tunisia's reservations to the Convention on the Rights of the Child; and Tunisia's accession to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Tunisia also adopted the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, and it would continue to commute death sentences to life imprisonment terms. Other measures included welcoming Human Rights Watch to visit Tunisian prisons and establishing an authority to follow up on the implementation of recommendations made by treaty monitoring bodies.

4. There had been considerable changes in the political scene over the previous two decades, with nine political parties contributing to national intellectual and political debates on the country's future. Six of the parties were active in the Chamber of Deputies, representing opposing viewpoints. Furthermore, a new election system had recently introduced that guaranteed opposition parties at least 25 per cent of seats in the Government at the national, regional and local levels. With regard to the status of women, Tunisia had demonstrated the political will and taken steps to enable women to participate, on an equal footing with men, in all aspects of public, economic and social life. Tunisia interpreted Islamic sharia law in the context of its reformist approach, aimed at protecting human rights in general and women's rights in particular. Protection of children and the family were also among his Government's priorities, as demonstrated by the amendments to the Family Code and the establishment of a code on the protection of children.

5. The progress achieved required further consolidation, given the challenges posed by terrorism, religious enmity and the distressing discourse of certain satellite television networks that incited hatred of others and sometimes justified extremism. Terrorist acts had been perpetrated in Tunisia by foreign and national agents, among them the North African wing of the Al-Qaida organization. Such extremism portrayed a distorted image of religion and threatened the gains of modernity and democracy; according to one extremist leader, in Islam democracy was tantamount to apostasy. Furthermore, some 500 foreign television networks in the region tried to indoctrinate Tunisian youth with their simplistic and demagogic discourse.

6. The adverse effects of globalization also posed a threat to economic and social rights, which were interdependent and indissociable from all other human rights. His Government was committed to continue protecting and promoting human rights while also addressing a number of other challenges. He expressed the hope that his delegation would have a constructive dialogue with the Committee.

7. **The Chairperson** invited the delegation to address the questions on the list of issues (CCPR/C/TUN/Q/5).

8. **Mr. Labidi** (Tunisia) said, with reference to question 1 on the list of issues, that once a treaty

entered into force, it became part of the national legal system and a binding higher source of law. Tunisia's ordinary and administrative courts had decided to allow litigants to directly invoke international human rights and other legal instruments in several cases. For example, in 2000, the Tunis court of first instance had rejected an application to enforce an Egyptian act of repudiation on the grounds that it contradicted Tunisian public policy as derived from article 6 of the Constitution, articles 1, 2, 7 and 16, paragraphs 1 and 2, of the Universal Declaration of Human Rights, and articles 1, 2 and 16 (c) of the Convention on the Elimination of All Forms of Discrimination against Women. There had also been several instances in which courts had, in their rulings, cited international human rights instruments such as the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. In one such case dating back to 2003, a court of first instance, ruling on an action brought by the Public Prosecutor's Office to establish a child's filiation after paternity had been proved by DNA testing, had found that filiation as defined in article 68 of the Tunisian Personal Status Code must be interpreted broadly in accordance with article 2, paragraph 2, of the Convention on the Rights of the Child.

9. In 1999, the Administrative Tribunal, relying on article 23 of the Covenant, had reversed the administrative authorities' decision to dismiss an official of the internal security forces because he had failed to obtain prior authorization for marriage to a foreign woman. In a 2006 opinion, the Constitutional Council had pointed out that the Convention on the Rights of the Child, to which Tunisia was a party, gave precedence to the child's best interests and laid down the rights and obligations of parents and, where applicable, the extended family.

10. A commission comprising representatives of the relevant ministries was considering the question of Tunisia's accession to the Optional Protocol to the Covenant.

11. **Mr. Al-Ahmadi** (Tunisia), on the issue of whether the High Committee on Human Rights and Fundamental Freedoms was in conformity with the Paris Principles, said that the High Committee was well known in the Arab world. The Government had studied the comments and recommendations of United Nations human rights bodies and a recently introduced bill, if adopted, would bring the High Committee into

line with the Paris Principles. In accordance with paragraph 2 of the Principles, the bill would make the High Committee financially independent, stipulate that it had moral and legal personality, expand its mandate and set forth its composition and functions. It would be able to make recommendations to the President of the Republic, to intervene of its own volition where it considered that a human rights violation had occurred, to receive and consider complaints of such violations and to visit prisons without prior authorization in order to assess implementation of the applicable human rights law.

12. The High Committee's membership would consist of officials from the relevant national ministries and members of civil society, including prominent Tunisians representing different philosophical positions, academics and members of non-governmental organizations (NGOs). It would be able to take decisions by consensus or majority vote and would submit annual reports as stipulated in paragraph 3 (a) (iii) of the Paris Principles.

13. Some NGOs had expressed concern that the bill might place the High Committee in competition with other human rights bodies; however, the Government considered that such competition was desirable provided that the national institution cooperated with international bodies as needed.

14. **Mr. Tekkari** (Tunisia), replying to question 3 on the list of issues (CCPR/C/TUN/Q/5), said that 65 per cent of the pending Administrative Tribunal decisions had now been enforced. The remaining cases, which involved delay rather than non-enforcement, fell into two categories: those in which the Tribunal had called for a process — such as recruitment to a post — to be completely redone and those in which the Tribunal had awarded compensation that would be paid under the next year's budget.

15. On the issue of the independence of the judiciary, he explained that the Organization Act of 2005 had made the High Council of the Judiciary more independent. Its membership had been reduced from 35, of whom six were elected, to 18, of whom eight were elected; 30 per cent of its permanent members were women and an additional two women members were appointed to renewable two-year terms, after consultation with the Council as a whole, as an act of positive discrimination. The Council took decisions regarding the appointment, promotion and transfer of

judges, which were then promulgated by executive decree. The President of the Republic, who held the honorary rank of Chief Justice of Tunisia, was titular head of the Council but was not involved in preparing its decisions, which were drafted by a small group of elected members.

16. The tenure of judges, an issue on which the Committee had expressed concern in the past, was enshrined in domestic law but was not absolute; judges were guaranteed at least five years in a post, after which they could be transferred. Without that measure, it would be impossible to meet the need for judges in remote regions of the country that were considered undesirable.

17. Many civil society conflicts that had once been settled amicably or by the national authorities were now brought before the courts and were widely, and sometimes inaccurately, reported; where the court's decision differed from the views expressed by the media, false allegations that the judiciary lacked independence were made.

18. Tunisia had been a victim of terrorist attacks. The definition of terrorism contained in article 4 of Act No. 2003-75 of 10 December 2003 had been criticized as imprecise; however, it was based on the definition contained in the relevant international instruments, particularly the 1999 Convention for the Suppression of the Financing of Terrorism. The Act covered only acts that were already criminalized in the Criminal Code, further defining them as terrorism if they were committed for the purpose of terrorizing a person, a group of persons or a population; it did not cover crimes of opinion. In several cases, examining magistrates and judges had ordered the release of defendants who had organized meetings of a fundamentalist nature but had not engaged in actual preparations for a crime; two such individuals had subsequently perpetrated suicide bombing attacks.

19. The courts had also been criticized for allowing the names of witnesses and police officers to be concealed during court proceedings, but that was done only where an imminent threat was deemed to exist. Accused persons and their counsels could request the court to reveal the identity of the individuals concerned and in cases of abuse, the witness or police officer could be prosecuted.

20. His Government stood ready to improve its domestic law, including in the area of counter-

terrorism, but only in response to concrete recommendations based on the relevant United Nations instruments rather than on the legislation of other States; Tunisian law was already in advance of other countries in a number of areas, including that of police custody.

21. **Ms. Ammar** (Tunisia), on the issue of violence against women, said that the Personal Status Code, adopted in 1956, had established the emancipation of women and the equality of all citizens in principle. Efforts were being made to combat traditional attitudes that saw women as inferior, as well as gender-based violence and discrimination in the public and private sectors. Tunisia was in the process of becoming a party to the Additional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Criminal Code prohibited acts of violence against anyone of either sex, with or without premeditation. Women and girls enjoyed legal protection against rape, including by family members.

22. Women victims had full right of recourse and a number of remedies were available to them. Wives were no longer required to obey their husbands; under the amendments to the Personal Status Code adopted in 1993, relations between married couples were based on complementarity and independence and wives had legal personality in their own right.

23. Her Government had developed a plan of action to combat violence against women, and marriage was viewed as an aggravating circumstance that warranted a harsher penalty. Crimes of violence were punishable by one year's imprisonment and a fine of 1,000 dinars; that penalty was doubled if the perpetrator was a descendant or spouse of the victim. Marital rape was a crime under Tunisian law; however, there did not appear to have been any complaints of that crime. Several women's organizations had mounted awareness-raising campaigns and had established listening and counselling centres for women victims of assault. Article 236 of the Criminal Code made adultery by either husbands or wives, without distinction, punishable by law. Penalties could be either pecuniary or custodial, depending on the seriousness of the case and compensation was awarded for bodily injury and for material and non-material damages.

24. **Mr. Tekkari** (Tunisia) said that the Court of Cassation had ruled that all forms of sexual assault

were punishable by law. The Government had no statistics on the number of complaints of domestic violence but would remedy that omission in its next report.

25. **Ms. Gueddanna** (Tunisia) said that a major national debate had been held on violence against women. A national commission consisting of representatives of ministries, civil society organizations and the National Office of Family and Population Affairs (ONFP) had drawn up a national plan to combat violence against women. No statistics were yet available, but the commission had recommended conducting a national survey in 2008 on violence against women. Data collection mechanisms were also being reviewed. Many separate pieces of legislation, including the Personal Status Code, the Labour Code and laws on social security, women's work and sexual harassment, contained provisions which could be used as inputs to draft a law against gender violence.

26. The Ministry of the Interior and the Ministry of Public Health had made the reporting of gender violence compulsory for emergency centres and health facilities. The Ministry of Family, Children, Seniors' and Women's Affairs had recommended that priority be given to four areas: data collection; appropriate and diversified services; enhancing community awareness in order to change behaviour and institutions; and advocacy for application of the law. ONFP had already set up national programmes and effectively contributed to the efforts to eliminate violence against women by providing health services to almost 2 million women every year.

27. **Mr. Al-Ahmadi** (Tunisia), referring to question 7 on the list of issues, said that article 58 of the Personal Status Code established the conditions for child custody, including both general and special conditions. The general conditions applied to both sexes, while a special condition applied only to men. A man requesting custody should have a woman available to care for the child, and should also be related to the child to a degree that prohibited marriage. In the case of a woman, she should not be married, although that was not an absolute condition. A mother always had custody in the case of the father being deceased, or if she was breastfeeding her baby. As Tunisian legislators had adopted an approach that was based on the sole criterion of what was best for the child, those conditions were not incompatible with equality.

Tunisian case law included an example of custody of a Tunisian child being awarded to a foreign non-Muslim woman who resided outside Tunisia.

28. **Mr. Tekkari** (Tunisia), with regard to question 8 on the list of issues, said that, while Tunisia was a de facto abolitionist State, its position was not static. It recognized that to sentence a person to death and then not carry out the sentence also caused suffering to the condemned person. Tunisia was currently considering the possibility of reducing the cases to which the death penalty applied. A bill on the abolition of capital punishment was currently before Parliament. Indeed, there was clearly a lot of interest in moving towards de jure abolition.

29. **Mr. Rhemakhem** (Tunisia), with regard to question 9 on the list of issues, said that Tunisian law clearly prohibited torture and that Tunisia had been one of the first countries to ratify the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment without reservations. Tunisian law also protected all persons against arbitrary arrest and detention. Referring to the claims of some NGOs that Tunisia had arbitrarily detained human rights defenders or had given insufficient attention to their complaints, he noted that human rights advocates were treated like other citizens. They could bring complaints with a view to prosecution and if there were sufficient grounds to do so, an inquiry would be initiated.

30. Prosecutors had the power to visit detention centres to investigate complaints filed by detained persons. In one case where a human rights defender had allegedly been subjected to arbitrary detention, the person in question had in fact turned out to have been convicted of assaulting a colleague and obstruction of justice. The Committee surely did not expect human rights defenders to be immune from prosecution in such cases. Tunisia would certainly make every effort to implement the Committee's recommendations.

31. **Mr. Tekkari** (Tunisia) added that complaints could be brought before the State prosecutor, who could decide whether they were serious enough to warrant referral to a judge. If the complaints were subsequently found to be unsubstantiated, a charge of defamation could be brought.

32. Prior to a periodic review or a meeting of the Committee, complaints were very often invented in order to increase their number in an attempt to show systematic violation of human rights by the State Party.

The statistics themselves were the evidence. All citizens deserved protection and all were equal before the law.

33. Referring to the issues of living conditions in prisons, he noted that the International Committee of the Red Cross (ICRC) had visited prisons in Tunisia and that prisoners' living conditions had improved as a result of the implementation of ICRC recommendations. The granting of access to prisons through such visits had also helped to change the attitudes of prison officials. It had also prompted the Government to consider entering into agreements with other NGOs. Tunisia had already expressed its willingness to reach an agreement with Human Rights Watch for prison visits from that organization.

34. **Ms. Ammar** (Tunisia), on the issue of complaints of torture or ill-treatment against public officials, said that the Tunisian Government had introduced sophisticated and advanced legislation and mechanisms to put an end to such violations of human rights. Unfortunately, no statistics on complaints were yet available, but in view of the number of suggestions and comments from various United Nations bodies and human rights experts, they would be included in future reports. Some of the complaints had resulted in prosecution. Every person had the right to file complaints with the Attorney-General and the courts had competent personnel who could follow up on such complaints. Some were submitted to an investigative judge or to the criminal, appeal or arbitration courts. All those mechanisms served as guarantees to protect the rights of victims and their effectiveness was shown in the examples of case law cited in the report (CCPR/C/TUN/Q/5). Complaints could also be brought before the High Committee on Human Rights and Fundamental Freedoms and there were also administrative sanctions for public officials who violated human rights. The Ministry of Justice and other ministries responsible for law enforcement were also supporting awareness-raising campaigns in schools and universities and enhancing training for future security and prison officials. Efforts were continually being made to devise new mechanisms to make respect for human rights — by citizens and public officials alike — part of everyday reality in Tunisia.

35. **Mr. Tekkari** (Tunisia) said that human rights defenders had no reason to be concerned for their safety. Disciplinary mechanisms were in place to

prevent abuses by public officials and statistics on that subject would be provided in the future.

36. **Mr. Fellous** (Tunisia), referring to question 12, said that Tunisia had nine political parties, six of which were represented in the Chamber of Deputies. All political parties were free to publish their newspapers, and those represented in the Chamber of Deputies received a public subsidy for their activities. Unrecognized groups were treated in accordance with the Political Parties Act, which provided that they should act within the framework of the Constitution, defend the republican form of government and eschew violence and all forms of discrimination. The Act also stated that a political party could not be based on one religion, language, race, sex or region. The Tunisian authorities were in no way indifferent to acts of aggression, whatever the source, and if it was established that a law-enforcement official had carried out such acts, appropriate action was taken and the victims had every right to complain and obtain redress.

37. **Mr. Tekkari** (Tunisia), referring to question 13, said that it was of course the Government's policy to try and punish guilty officials or police officers, and to provide compensation to any persons detained without justification, as had in fact been done in two or three cases.

38. **Mr. Al-Ahmadi** (Tunisia) said, in response to question 14 regarding the right to a fair trial, that one of the requirements was certainly that evidence must be gathered transparently, without resort to violence, and that confessions obtained by force were inadmissible. The human dignity provisions of the 2002 Constitution and the whole body of law governing treatment in police custody made torture a crime, and provided safeguards such as the right to request a doctor when in police custody and — with the adoption of 2007 legislation — to have a lawyer present during interrogations. In practice, many convictions had been overturned because they had been based on forced confessions — one instance being as recent as 2005 — and the Government's policy was clear.

39. **The Chairperson** invited queries from the Committee on questions 1 to 14 of the list of issues.

40. **Ms. Chanet** observed that the high-level delegation had competently addressed many of the Committee's questions regarding the situation in Tunisia during the long period covered by the latest

report, which had been submitted late. Noting, however, that all the cases cited (reply to question 1) in which the Covenant or other international treaties had been invoked directly before the courts had referred exclusively to personal status law, she wondered if there had been no jurisprudence in other areas such as detention, torture or freedom of expression. Also, it would be useful for the Committee to know the specific reasons why Tunisia, which was a party to so many international treaties, had not as yet decided to accede to the second Optional Protocol, especially since it declared itself to be a *de facto* abolitionist State. The fact that its courts continued to hand down death sentences, even if not enforced, seemed inconsistent. Also, Tunisian law allowed detainees to be held in police custody longer than was recommended under the Committee's jurisprudence, and it was not clear how detainees would go about challenging the legality of their detention, especially in cases where they had no lawyer.

41. Regarding Tunisia's anti-terrorism laws (reply to question 5), the definition of terrorism adopted in Act No. 2003-75 allowed it to derogate from the country's accepted criminal procedure — and indeed from article 9 of the Covenant — by making it a crime simply to prepare to commit a terrorist act. Furthermore, the Act released any lawyer involved in a terrorist case from the obligation of professional secrecy towards his client, imposing instead an obligation to report to the authorities on the client's acts, and this contravened the Committee's jurisprudence on professional secrecy. It would be difficult to see how the accused could ever trust their lawyers under such circumstances. The delegation should clarify what was implied by the compulsory reporting requirements of witnesses to terrorist acts, and the right to punish them for not doing so. There appeared to be very few terrorism cases that had come to trial and resulted in convictions and even fewer disciplinary proceedings. Despite the lack of statistics, the delegation could perhaps provide information on some such cases; 19 of them were cited by major non-governmental organizations in the field.

42. The report spoke in generalities on the issue of torture, whereas there had been very specific complaints of torture at the hands of Tunisian authorities. She asked the delegation to comment on a recent judgment of the European Court of Human Rights upholding the refusal of another country to extradite to Tunisia because of the risk of torture there.

43. The delegation had discounted the claims of harassment made by human rights defenders, but, for one, the Special Representative of the Secretary-General on human rights defenders had in her reports E/CN.4/2002/106 and E/CN.4/2006/95/Add.5 recorded, respectively, an impressive 30 cases of harsh treatment and 78 instances of harassment complaints by journalists, militants, doctors, lawyers and others, and they could not all be described as paranoid. The charges brought against human rights defenders by the Tunisian authorities had been very vague, and she would appreciate further comment to justify the Government's repressive reaction in such cases.

44. **Mr. Bhagwati** expressed the hope that Tunisia, going beyond its policy of not enforcing any death sentences handed down, would soon abolish the death sentence *de jure*. He asked for more information about the High Committee on Human Rights and Fundamental Freedoms: on the appointment of its members, the qualifications required, the duration of their terms and especially how their independence was ensured, and also how often the High Committee — as well as the Ombudsman referred to in paragraph 72 of the report — had made recommendations to the Government on compensation to victims in the past three years. If such recommendations were not binding and if the Government rejected any of them, he wondered whether it had to give and publicize its reasons.

45. More information on the Administrative Tribunal (reply to question 1) would be useful: how its judges were appointed, the scope of their jurisdiction and their reporting obligations, and especially how their judgements and compensation decrees were enforced. While the Tunisian Constitution and laws guaranteed the independence of the judiciary, he was concerned that it was the Executive branch rather than the Judiciary which organized the examination and recruitment of judges and decided the grounds for disciplinary procedures.

46. **Mr. Glélé Ahanhanzo** observed that the delegation had given a very academic presentation of the issues, and that it was perhaps too neat to reflect the actual realities. The fact, for instance, that the proceedings and judgements under the anti-terrorism legislation were all secret and involved police officers and officials whose identity could be kept secret was a worrisome reminder of the "faceless judges" so

criticized elsewhere. The scope of the 2003 terrorist act was overly broad and should be limited.

47. It was claimed that non-governmental organizations had access to the prisons, but only foreign NGOs did. In the interests of freedom of expression, as well as of the necessary role of civil society proclaimed by the Covenant, local and national NGOs should also be given access. In general, he would like more information about what the Government was doing in practice in the various areas covered by the Covenant and what its future plans were to improve the human rights conditions of all its citizens.

The meeting rose at 6 p.m.